

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

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In re:	:	Chapter 11
	:	
CIRCUIT CITY STORES, INC.,	:	Case No. 08-35653 (KRH)
<u>et al.</u> ,	:	
	:	
Debtors	:	Jointly Administered
-----	X	

**OBJECTION OF LOWE’S HIW, INC. TO MOTION OF THE
DEBTORS FOR ORDERS UNDER BANKRUPTCY CODE SECTIONS
105, 363, AND 503 AND BANKRUPTCY RULES 2002 AND 6004
(I) (A) APPROVING BIDDING PROCEDURES FOR SALE OF
CERTAIN REAL PROPERTY IN MORENO VALLEY, CALIFORNIA,
(B) AUTHORIZING SELLERS TO ENTER INTO AGREEMENT IN
CONNECTION THEREWITH SUBJECT TO HIGHER AND BETTER
PROPOSALS, (C) APPROVING EXPENSE REIMBURSEMENT IN
CONNECTION THEREWITH, (D) SETTING AUCTION AND SALE
HEARING DATES; (II) APPROVING SALE OF PROPERTY FREE
AND CLEAR OF LIENS; AND (III) GRANTING RELATED RELIEF**

Lowe’s HIW, Inc. (“Lowe’s”), by counsel, objects to the *Motion of the Debtors for Orders Under Bankruptcy Code Sections 105, 363, and 503 and Bankruptcy Rules 2002 and 6004 (I) (A) Approving Bidding Procedures for Sale of Certain Real Property in Moreno Valley, California, (B) Authorizing Sellers to Enter into Agreement in Connection Therewith Subject to Higher and Better Proposals, (C) Approving Expense Reimbursement in Connection Therewith, (D) Setting Auction and Sale Hearing Dates; (II) Approving Sale of Property Free and Clear of Liens; and (III) Granting Related Relief* (the “Motion”) to the extent the Motion seeks to approve the sale of that certain Sign Easement Agreement between Lowe’s and Circuit City Stores West Coast, Inc.

(“Circuit City”) as more fully described hereinafter, and in support of its objections states the following:

1. The Motion seeks authority to sell Circuit City’s real property located at 12530 Day Street in Moreno Valley, California, including all vested signage rights of Circuit City in connection with such real property and the building located thereon free and clear of all interest, pursuant to a Purchase and Sale Agreement, as amended, dated as of May 13, 2009, between Circuit City and 99¢ Only Stores (“Purchaser”).

2. The First Amendment to Purchase and Sale Agreement between Circuit City and Purchaser provides that Circuit City agrees to sell and convey to Purchaser, among other things, all the rights and appurtenances pertaining to such land located at 21530 Day Street, Moreno Valley, California, and “to the extent included in the Sale Order entered by the Bankruptcy Court, all vested signage rights of Seller in connection with such land and the building located thereon,…”

3. On or about July 18, 2005, Lowe’s and Circuit City, entered into a Sign Easement Agreement whereby Lowe’s granted to Circuit City the right to place or affix a sign panel (the “Sign Panel”) on a monument sign on property owned by Lowe’s. A copy of the Sign Easement Agreement is attached hereto as Exhibit 1.

4. The Sign Easement Agreement contains certain use, maintenance, insurance, and indemnification obligations as between Lowe’s and Circuit City, and Circuit City is obligated to pay an annual maintenance fee to Lowe’s.

5. The Sign Easement Agreement is an executory contract under § 365 of the Bankruptcy Code as that term has been interpreted in the Fourth Circuit. *Gloria Mfg. Corp. v. Int’l Ladies’ Garment Workers’ Union*, 734 F.2d 1020 (4th Cir. 1984).

6. The Sign Easement Agreement provides

Assignment. Circuit City shall not have the right to assign, sublet, or license to any other person or entity the use of the easement and, in particular, the Sign Panel or its rights granted under this Agreement and shall not permit or suffer any other person or entity to use the easement or, in particular, the Sign Panel, except as permitted under the terms of this Agreement without the prior written consent of Lowe's.

7. Circuit City has not requested, nor has it obtained, the consent of Lowe's to the assignment of the Sign Easement Agreement.

8. Circuit City does not have the authority under § 363 of the Bankruptcy Code to transfer the Sign Easement Agreement to Purchaser and must comply with § 365(f) of the Bankruptcy Code in connection with any assumption and assignment of the Sign Easement Agreement to Purchaser.

9. Further, because the Sign Easement Agreement is an executory contract, to transfer any rights Circuit City has under the Sign Easement Agreement, Circuit City must assume and assign the Sign Easement Agreement to Purchaser pursuant to § 365 of the Bankruptcy Code.

10. Lowe's reserves the right to amend this objection if and as it may be so advised.

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WHEREFORE, Lowe's HIW, Inc. respectfully prays that this Court deny the Motion to the extent that it seeks to transfer any right, title, or interest whatsoever in the Sign Easement Agreement to a Purchaser.

Dated: July 16, 2009
Richmond, Virginia

HUNTON & WILLIAMS LLP

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Counsel for Lowe's HIW, Inc.

CERTIFICATE OF SERVICE

I hereby certify that, on July 16, 2009, the undersigned caused the foregoing *Motion of the Debtors for Orders Under Bankruptcy Code Sections 105, 363, and 503 and Bankruptcy Rules 2002 and 6004 (I) (A) Approving Bidding Procedures for Sale of Certain Real Property in Moreno Valley, California, (B) Authorizing Sellers to Enter into Agreement in Connection Therewith Subject to Higher and Better Proposals, (C) Approving Expense Reimbursement in Connection Therewith, (D) Setting Auction and Sale Hearing Dates; (II) Approving Sale of Property Free and Clear of Liens; and (III) Granting Related Relief* to be served electronically through the Court's CM/ECF system and also via first-class mail, postage pre-paid, on the following:

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